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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,635	08/22/2003	David N. Rucker	A-8281.C	8019

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EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,635

Applicant(s)

RUCKER ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-17 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-12, 18, 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-12, 18, 20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,125,082 to Reid.

Regarding Claims 1-3, 6-8, 11, 12, Reid teaches a device and method for dispensing pet treats at a plurality of selected times during a predetermined period, comprising: a container (Reid #11) for holding a plurality of pet treats (Reid Fig. 1 element C, the dog could eat and play with the cigarette); a time controlled dispenser for dispensing a plurality of pet treats, said time controlled dispenser including a microprocessor and an input device, said input device inputting the predetermined period into said microprocessor, said microprocessor including a program to automatically calculate a schedule for dispensing the pet treats at times which are randomized and which are biased such that when the predetermined period is subdivided into a number of equal consecutive intervals, said number of equal consecutive intervals equivalent to the number of planned dispensations, the majority of said intervals always include at least one of said times (Reid Col. 5 line 1-19).

Regarding Claims 4 and 9, Reid teaches pet toys each contains a pet comestible (Reid cigarette has an outer paper shell that the animal can play with and the tobacco on the inside is the comestible).

Regarding Claims 5 and 10, Reid teaches the dispenser dispenses a plurality of said pet treats at any one time (Reid teaches a cigarette which is a treat and a comestible, the cigarette is inherently made of a plurality of tobacco fibers/components and the tobacco is the treat and toy; therefore a plurality is dispensed since one cigarette contains plural tobacco components).

Regarding Claims 18 and 20, Reid teaches time controlled dispenser further including a means for generating an audio signal prior to at least one of said planned dispensations (Reid Fig. 24 and Col. 5 line 40-45)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 18, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,299,529 to Ramirez in view of U.S. Patent No. 6,273,027 to Watson.

Regarding Claims 1, 6, 11, 12, Ramirez teaches a device and method for dispensing pet treats at a plurality of selected times during a predetermined period, plurality comprising: a container (Ramirez #14) for holding a plurality of pet treats; a

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time controlled dispenser for dispensing a plurality of pet treats, said time controlled dispenser including a microprocessor (Ramirez #154) and an input device (Ramirez #162, 161, 160), said input device inputting the predetermined period into said microprocessor (Ramirez Col. 1 line 66-68, Col. 4 line 15 and Col. 6 line 46-47).

Ramirez teaches that the user sets the program and thus can be programmed for any time dispensing frequency, i.e. equal consecutive intervals. Ramirez is silent on explicitly teaching that said microprocessor including a program to automatically calculate a schedule for dispensing the pet treats at times which are randomized and which are biased such that when the predetermined period is subdivided into a number of equal consecutive intervals, said number of equal consecutive intervals equivalent to the number of planned dispensations, the majority of said intervals always include at least one of said times.

However, Watson teaches that it is old and notoriously well-known to have dispensing time intervals automatically set by the microprocessor (Watson Col. 4 line 19-27). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ramirez with the teachings of Watson at the time of the invention since the modification is merely the automation of a once manual procedure to reduce labor and for the ergonomic ease of the user. Furthermore, it would have been obvious for the schedule of dispensing times to reflect the physiological needs of the animal which inherently may create a random pattern.

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Regarding Claims 2-4 and 7-9, Ramirez as modified teaches pet treats are pet comestibles (Ramirez Col. 1 line 68), toys (Ramirez the animal could play with the food; Watson Col. 3 line 49-50), a pet toys contain comestible (Watson Col. 3 line 49-50).

Regarding Claims 5 and 10, Ramirez as modified teaches the dispenser dispenses a plurality of said pet treats at any one time (Ramirez abstract).

Regarding Claims 18 and 20, Ramirez as modified teaches time controlled dispenser further including a means for generating an audio signal prior to at least one of said planned dispensations (Ramirez abstract).

***Allowable Subject Matter***

Claims 13-16, 17, 19 are allowed.

***Response to Arguments***

Applicant's arguments, see page 6, filed 21 September 2004, with respect to claims 13-17 and 19 have been fully considered and are persuasive. The rejection under 35 U.S.C. 103(a) of claims 13-17 and 19 has been withdrawn.

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

It is old and notoriously well-known that animal reward/feeding schedules are influenced by many parameters such as the food size, the size of the animal, the kind of animal, schedule suggest by the manufacturer, how long it takes for the animal to eat the previously dispensed item, etc. Furthermore, it is notoriously well-known to manually program animal feed dispensing device in the absence of the owner.

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Examiner maintains that merely making a manual procedure automatic does not present a patentable distinction over the teachings of the cited prior art of record.

Applicant's claims contain a lot of functional/intended use language "for". It is suggested that applicant positively claim these intended use limitations. Also, it is recommended that applicant clarify the statement of independent claim 1 and 6, "the majority of said intervals always include at least one of said times". The examiner understands what applicant intends to claim, but it could be worded more clearly.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,694,916.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

18 January 2006